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Attorneys for Plaintiff, JINJU ZHANG

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JINJU ZHANG, an individual,

Plaintiff,

V.

BENLIN YUAN, an individual; HONG LIN, an individual; CAMIWELL, INC., a California corporation; CAMIWELL, INC. (CANADA), a Canadian corporation; BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD., a Chinese corporation; ASIACOM AMERICAS, INC., a Virginia corporation; BANK OF AMERICA CORPORATION, a National Association and DOES 1-20, inclusive

Defendants.

Case No.: 5:23-cv-5818-VC

**DECLARATION OF BRIAN A.
BARNHORST IN SUPPORT OF
OPPOSITION TO MOTIONS OF BEIJING
ASIACOM AND ASIACOM AMERICAS
TO DISMISS FIRST AMENDED
COMPLAINT**

Date: August 15, 2024
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Courtroom: 4 - 17th Floor

1 I, Brian A. Barnhorst, declare:

2 1. I am an attorney at law, duly licensed to practice and practicing in the State of California.

3 2. I am Senior Litigation Attorney and General Counsel at SAC Attorneys LLP, counsel for
4 Plaintiff herein.

5 3. I have personal knowledge of the matters contained in this declaration and, if called upon,
6 could and would competently testify thereto.

7 4. I make this declaration in support of Plaintiff's opposition to the motions to dismiss filed
8 by Defendants Beijing Asiacom and Asiacom Americas.

9 5. Appended as **Exhibit A** hereto is a true and correct copy of the proposed Second
10 Amended Complaint.

11
12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct, and that this declaration was executed on June 26, 2024, in San
14 Jose, CA.

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16 _____
17 Brian A. Barnhorst
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Exhibit A

1 James Cai (SBN 200189)
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11 Attorneys for Plaintiff and Counter-Defendant Jinju Zhang

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JINJU ZHANG, an individual;

Plaintiff,
vs.

BENLIN YUAN, an individual; HONG LIN, an individual; CAMIWELL, INC., a California corporation; CAMIWELL, INC. (CANADA), a Canadian corporation; BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD., a Chinese corporation; ASIACOM AMERICAS, INC., a Virginia corporation; BANK OF AMERICA CORPORATION, a National Association; and DOES 1 to 20, inclusive,

Defendants.

Case No.: 3:23-cv-05818-CRB

SECOND AMENDED DERIVATIVE COMPLAINT

- 1. CONVERSION**
- 2. BREACH OF FIDUCIARY DUTY**
- 3. FRAUD (CONCEALMENT)**
- 4. UNJUST ENRICHMENT**
- 5. UNJUST ENRICHMENT**
- 6. COMMON COUNTS: MONEY HAD AND RECEIVED**
- 7. COMMON COUNTS: MONEY HAD AND RECEIVED**
- 8. PRELIMINARY INJUNCTION**
- 9. DECLARATORY RELIEF**
- 10. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALINGS**

AND RELATED CROSS-ACTIONS

Comes now the Plaintiff, JINJU ZHANG (Plaintiff or “Zhang”), and alleges for himself and derivatively on behalf of nominal defendant CAMIWELL, INC. (formerly Camiwell, LLC; “Camiwell U.S.”), as follows:

THE PARTIES

1. Plaintiff Zhang is an individual residing in Conroe, Texas.¹

2. Plaintiff is informed and believes and, based thereon, alleges that Defendant BENLIN YUAN (“Yuan”) is an individual residing in Mississauga, Ontario, Canada, and was at all relevant times conducting business in Santa Clara County, California. Plaintiff is informed and believes, and thereon alleges that Defendant Yuan was and is, at all relevant times, the CEO of Camiwell, Inc. (“Camiwell U.S.”) and has 40% of the shares of Camiwell U.S., an employee of Defendant BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD (“Asiacom China”) as its key business managerin charge of its businesses in the U.S. and Canada, and spouse of Defendant Hong Lin.

3. Plaintiff is informed and believes and, based thereon, alleges that Defendant HONG LIN ("Lin") is the spouse of Yuan, and is an individual residing in Mississauga, Ontario, Canada, and was at all relevant times conducting business in Santa Clara County, California. Lin, at all relevant times, owned at most 25% of the shares of Camiwell, U.S.

4. Plaintiff is informed and believes and, based thereon, alleges that nominal Defendant CAMIWELL, INC. (“Camiwell U.S.”) is and, at all times relevant to this action, was a California corporation conducting business in Santa Clara County, California, with its principal place of business in Santa Clara County, California.

5. Plaintiff is informed and believes and, based thereon, alleges that Defendant CAMIWELL, INC. (CANADA) (“Camiwell Canada”), is and, at all times relevant to this action, was a Canadian corporation conducting business in Santa Clara County, California.

6. Plaintiff is informed and believes and, based thereon, alleges that Defendant BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD. (“Asiacom China”), is a Chinese information technology services company headquartered in Beijing, China, that provides IT services (such as network cabling and server operation and maintenance in data centers for major customers such as Alibaba and Didi, in China and US) throughout China and in California, including in this judicial district. Asiacom

¹ Previously, Mr. Zhang resided in Santa Clara County, California.

1 China's key business manager and employee, at all relevant times, in charge of business in the U.S. and
2 Canada is Defendant Yuan.

3 7. Plaintiff is informed and believes and, based thereon, alleges that Defendant ASIACOM
4 AMERICAS, INC. ("Asiacom U.S."), is Virginia corporation wholly owned by Asiacom China, and, at
5 all times relevant, was and is conducting business in Santa Clara County, California through its key
6 business manager and employee, Yuan.

7 8. Plaintiff is informed and believes and, based thereon, alleges that Defendant BANK OF
8 AMERICA CORPORATION ("B of A") is a National Association, and, at all times relevant, was and is
9 conducting business in Santa Clara County, California.

10 9. Plaintiff is informed and believes and, based thereon, alleges that, at all relevant times, each of
11 the Defendants other than B of A, or some of them, were the partners, agents, servants, and/or employees
12 of one or more of the other Defendants and, in doing the things hereafter alleged, were acting within the
13 scope of said Defendants' authority such as a partner, agent, servant, and/or employee and with the
14 permission and consent of the other Defendants.

15 **JURISDICTION AND VENUE**

16 10. The Court has subject matter jurisdiction over this matter and its California state law claims
17 pursuant to 28 U.S.C. §§ 1332 and 1337.

18 11. The Court has personal jurisdiction over Defendants because they purposefully availed
19 themselves of the benefits and protections of the laws of the State of California and the United States and
20 have substantial minimum contacts to and business in this judicial district;

21 i) The Court has personal jurisdiction of Defendants Yuan and Lin who have purposefully
22 availed themselves to the benefits and protections of the laws of the State of California as owners of
23 Camiwell U.S., a California corporation.

24 ii) The Court has personal jurisdiction over Camiwell U.S. with a principal place of business
25 in Santa Clara County, California, as it purposefully availed itself to the benefits and protections of the
26 laws of the State of California by registering it's corporate status with the California Secretary of State's
27 Office.

1 iii) The Court has personal jurisdiction over Asiacom U.S. as it purposefully availed itself to
 2 the benefits and protections of the laws of the State of California with its filing of a corporate status
 3 registered with the California Secretary of State's Office to do business in the State of California and
 4 paid taxes to the California Franchise Tax Board to keep its corporate status active in the State of
 5 California. Asiacom U.S. has sufficient minimum contacts with the State of California by conducting
 6 business through it's key business manager and employee Defendant Yuan in the County of Santa Clara,
 7 California.

8 iv) The Court has personal jurisdiction over Camiwell Canada as it has sufficient minimum
 9 contacts with the State of California as it shares the same website, same customers, and same ownership
 10 (except for Zhang who does not own Camiwell Canada) as Camiwell U.S., and performs the same
 11 business services and utilizes the same or substantially similar employees as Camiwell U.S. which has a
 12 principal place of business in Santa Clara County, California.

13 12. The Court has personal jurisdiction over Asiacom China as it purposely availed itself of the
 14 privileges and benefits of the protection of the laws of the State of California when it hired Defendant
 15 Yuan as its key manager and employee in developing Asiacom China's execution of business in the State
 16 of California. Asiacom China also had sufficient minimum contacts which were continuous and
 17 systematic with the State of California, at all relevant times, when it subcontracted its IT work with
 18 Camiwell U.S. which accounted for 95% of Camiwell U.S.'s business. The IT work was performed by
 19 approximately 35 engineers of Camiwell U.S. in Virginia and 15 engineers in California and at two data
 20 centers for network cabling and server maintenance in the Santa Clara, California. As evidenced in an
 21 email by Feng Wang, Vice President of Asiacom China in charge of overseas business, Wang thanked
 22 Camiwell U.S.'s past years of service and wanted to ensure a smooth transition with Camiwell U.S.'s
 23 engineers assisting Asiacom U.S.'s engineers when Asiacom China sets up its own operations in the U.S.
 24 See ***Exhibit A***, Email from Feng Wang dated November 20, 2018 with translation from Chinese to
 25 English.

26 13. In fact, this representation was untrue since Asiacom U.S. immediately thereafter conjured a
 27 secret plan with Yuan and his brother Ben Tao Yuan to raid Camiwell U.S. by hiring away (instead of
 28 transitioning to work to Asiacom U.S.'s own engineers, because there was none) all of approximately 50

1 of its engineers (15 of whom were working in data centers located in Santa Clara County, California)
 2 and looting almost all of Camiwell U.S.'s equipment and assets for a nominal amount of \$37,000. This
 3 Court's exercise of jurisdiction over the Defendants would comport with traditional notions of fair play
 4 and substantial justice.

5 14. Venue is proper in the Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events
 6 and omissions giving rise to the claims alleged in this First Amended Complaint occurred in Santa Clara,
 7 California, and the Northern District of California. Also, the core business and assets at issue in this First
 8 Amended Complaint were and are primarily in this judicial district.

9 15. The amount in controversy exceeds \$75,000 exclusive of interest and costs.

10 **ALTER EGO ALLEGATIONS**

11 15. Plaintiff is informed and believes, and based thereon, alleges that Defendants Yuan and Lin,
 12 Camiwell Canada, and Asiacom U.S. is and, at all times since its formation, were the alter egos of each
 13 other; there was a unity of ownership and interest by and between Defendants Yuan, Lin, Camiwell
 14 Canada, and Asiacom U.S. such that any separateness between them has never existed; Yuan and Lin, at
 15 all relevant times, owned Camiwell Canada; concealing from Plaintiff Zhang, Yuan, while being CEO
 16 of Plaintiff Camiwell US, secretly incorporated Asiacom U.S. (with his brother Ben Tao Yuan as its
 17 CEO) as a subsidiary for Asiacom China and competitor of Camiwell US; together, Yuan, Ben Tao Yuan,
 18 Lin, and Asiacom U.S. carried out a secret corporate raid plan against Camiwell U.S., by hiring away all
 19 its engineers and acquiring all its assets for the nominal amount of \$37,000 (pursuant to a secret contract
 20 signed by Yuan as President of Camiwell U.S. and his brother Ben Tao Yuan as CEO of Asiacom U.S.).

21 16. Plaintiff is informed and believes, and based thereon, alleges that Defendants Camiwell Canada
 22 and Asiacom U.S. were formed and operated with inadequate capitalization and failed to respect other
 23 corporate formalities that would indicate a separate existence from each other.

24 17. Plaintiff is informed and believes, and basesd thereon, alleges that Defendants Yuan and Lin,
 25 Camiwell Canada and Asiacom U.S. commingled and failed to segregate the funds and assets of each
 26 other from their own and treated the assets and funds nominally belonging to each other as their own
 27 funds.

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1 18. Plaintiff is informed and believes, and based thereon, alleges that Defendants Yuan and Lin have
 2 controlled, dominated, managed, and operated Camiwell Canada since its formation for their benefit.

3 19. Plaintiff is informed and believes, and based thereon, alleges that Defendants Yuan and Lin have
 4 controlled, dominated, managed, and operated Asiacom U.S. since its formation for their benefit.

5 20. Plaintiff is informed and believes, and based thereon, alleges that Defendant Camiwell Canada
 6 and Asiacom U.S. is, and at all times mentioned was, a mere shell, instrumentality and conduit through
 7 which Defendants Yuan and Lin carry on their activities. Defendants Yuan and Lin exercised and
 8 continue to exercise such complete control and dominance of the activities of Defendant Camiwell
 9 Canada and Asiacom U.S. that any individuality or separateness of them do not, and all relevant times
 10 did not, exist. Plaintiff is informed and believes, and based thereon, alleges that Defendant Camiwell
 11 Canada and Asiacom U.S. existed solely to ensure that Defendants Yuan and Lin remain “judgment
 12 proof.”

13 21. Adherence to the fiction of the separate existence of Defendants Camiwell Canada, Asiacom U.S.,
 14 Yuan, and Lin as entities distinct from each other would permit an abuse of privileges against liability
 15 afforded to companies and corporations, and would result in unfairness to Plaintiff and an inequitable
 16 result. It would promote injustice by allowing Defendants Camiwell Canada, Asiacom U.S., Yuan, and
 17 Lin to evade liability or veil assets that should in equity be used to satisfy the judgment sought by Plaintiff
 18 in this action.

19 **GENERAL ALLEGATIONS**

20 22. Camiwell U.S., is an information technology company based in Santa Clara, California. At all
 21 times relevant, the directors were and are Zhang, Yuan, and Lin; the officers were Zhang, Yuan, and Lin;
 22 the officers were and are Zhang, Yuan, and Hui Sun (“Sun”); the shareholders were and are Yuan (40%),
 23 Zheng (35%), and Lin (25%). Lin and Yuan are married and therefore jointly control 65% of the equity
 24 of Camiwell U.S. Plaintiff is informed and believes and, based thereon, alleges that Camiwell Canada is
 25 located in Mississauga, Ontario, Canada; it was incorporated by Yuan and is owned exclusively by Yuan
 26 and Lin. Initially, Camiwell U.S. did not have much business when it started in 2014.

27 23. In December 2015, Camiwell, U.S.’s business started to grow.

1 24. From 2016 to 2017, Camiwell U.S.'s business continue to grow. However, Yuan was unwilling
 2 to provide business operation data and contract information.

3 25. In the early months of 2018, Yuan refused to provide business and accounting records to Zhang
 4 and told Zhang there were no written contracts and only verbal agreements with Asiacom China, its
 5 major customer.

6 26. After May 2018, Yuan told Zhang that Asiacom China wanted to merge with Camiwell U.S but
 7 refused to disclose any concrete terms and conditions. Therefore, Zhang responded in the negative for
 8 lack of visibility. Yuan suggested that Camiwell U.S. be sold to Camiwell Canada (a company that Yuan
 9 and Lin owned) and then sell Camiwell Canada to Asiacom China.

10 27. A few days later, Asiacom China offered to purchase Camiwell U.S. and let Yuan be in charge
 11 of the Virginia office and do business in the East Coast, and Zhang in charge of the California site and
 12 do business in the West Coast. Zhang refused and the merger negotiations ended.

13 28. Until the end of 2018, Camiwell U.S.'s main customer was Defendant Asiacom China, which is
 14 a contractor for large Chinese technology companies providing mainly local data center server operation
 15 and maintenance and network cabling services. Asiacom China would subcontract its IT work to
 16 Camiwell U.S. through various service contracts accounting for about 95% of Camiwell U.S.'s business.
 17 The IT work was performed by approximately fifty engineers of Camiwell U.S., approximately fifteen
 18 of whom were working at two data centers for network cabling and server maintenance in Santa Clara,
 19 California.

20 29. On November 20, 2018, Feng Wang, Vice President of Asiacom China in charge of overseas
 21 business, sent an email and thanked Yuan and Plaintiff Zhang for Camiwell U.S.'s past years of service
 22 and wanted to ensure a smooth transition with Camiwell U.S.'s engineers assisting Asiacom U.S.'s
 23 engineers when Asiacom China set up its own operations in the U.S.

24 30. On November 24, 2018 at a Camiwell U.S. shareholder meeting, Yuan told Plaintiff that he would
 25 be fully loyal to Camiwell U.S. and not do anything that would be competitive against Camiwell U.S.

26 31. On November 26, 2018, after the failure of the attempted acquisition of Camiwell US and
 27 concealing from Plaintiff, Asiacom China in collusion with Yuan incorporated Asiacom U.S. as its
 28

1 subsidiary, with Yuan's brother Ben Tao Yuan acting as its CEO, using the Camiwell's address in
 2 Virginia as its office in US.

3 32. Concealing from Plaintiff and contrary to the promise of Feng Wang for a professional and
 4 cooperative transition of business, Asiacom U.S., through Yuan and his brother Ben Tao Yuan as CEO
 5 of Asiacom U.S., carried out a secret corporate raid plan by hiring almost all 50 of the engineers of
 6 Camiwell U.S (instead of transitioning the work from Camiwell U.S.'s engineers to Asiacom U.S.'s
 7 engineers, which were non-existing), and purchasing all of Camiwell U.S.'s equipment necessary for
 8 business for the nominal amount of \$37,281.29 pursuant to a Device and Asset Transfer Agreement (the
 9 "Asset Transfer Agreement") with Yuan signing as President of Camiwell U.S. and his brother Ben Tao
 10 Yuan as CEO of Asiacom U.S. *See Exhibit B, Device and Asset Tranfer Agreement with translation*
 11 *from Chinese to English.*

12 33. Concealing from Plaintiff, Yuan as CEO of Camiwell U.S. signed the Asset Transfer Agreement,
 13 that transferred almost all assets of Camiwell, U.S. to Asiacom U.S., with Yuan's brother signing on
 14 behalf of Asiacom U.S. which was and is, at all relevant times, a subsidiary of Asiacom China.

15 34. Plaintiff is informed and believes and, based thereon, alleges that Yuan and his brother hold an
 16 ownership interest in Asiacom China.

17 35. In or about 2018, Asiacom China was planning an initial public offering (IPO) of its stock in
 18 China.

19 36. After losing the business of Asiacom China, Yuan began to push Zhang to dissolve Camiwell
 20 U.S. Zhang became suspicious of Yuan's motives, and demanded corporate documents of Camiwell
 21 U.S. to no avail.

22 37. On or about July 20, 2020, Zhang initiated a lawsuit in Santa Clara County Superior Court (Case
 23 No. 20CV368535, the "State Case") against Yuan, Lin, and Camiwell U.S.²

24 38. Plaintiff did not discover the Asset Transfer Agreement until discovery in the State Case took
 25 place in or about October 2021.

27 ² In September of 2023, the State Case concluded with Zhang accepting separate offers to compromise from Yuan/Lin and
 28 Camiwell U.S. pursuant to California Code of Civil Procedure section 998.

1 39. In or about December 2021, Defendant Asiacom China registered its stock for an IPO in China.
 2 According to its registration statement (rough English translation), “Due to the failure of the acquisition
 3 of Camiwell in the United States, on November 26, 2018, the company established the U.S. Asiacom to
 4 be responsible for the execution of business in the United States. At present, the United States and
 5 Canada are executed by Asiacom in the United States and Camiwell in Canada respectively, and the main
 6 business leader is still Benlin Yuan.”

7 40. According to the Asiacom China IPO registration statement, after Yuan registered Asiacom U.S.,
 8 Camiwell Canada was acquired by Asiacom China (through its subsidiary in Hong Kong, Rongsheng
 9 Hi-Tech) in or about May 2019.

10 41. According to the Asiacom China IPO registration statement, Yuan and Lin were paid RMB
 11 10.5705 million (USD and RMB exchange ratio at the time of the Complaint is about 1:7.28) for the sale
 12 of Camiwell Canada in June 2019.

13 42. According to the Asiacom China IPO registration statement, Camiwell Canada diverted Asiacom
 14 China’s business from Camiwell U.S. to Camiwell Canada, in the amount of RMB 6.5845 million and
 15 RMB 3.6031 million in 2018 and 2019, respectively, while outsourcing to Camiwell U.S. to provide the
 16 same IT services for no consideration. Plaintiff is informed and believes and, based thereon, alleges that
 17 Camiwell Canada was able to minimize its own expenses by maintaining a barebones operation with
 18 only two employees. Plaintiff is further informed and believes and, based thereon, alleges that Camiwell
 19 Canada’s actions were at the direction of Asiacom China.

20 43. This scheme enabled Yuan and Lin to maximize their profit (approximately \$1.4 million) through
 21 Camiwell Canada at the expense of Camiwell U.S., and enabled them to sell Camiwell Canada to
 22 Asiacom China for over \$1.5 million dollars. None of said information and facts were available to Zhang
 23 at the time he filed the State Case, and the same were not alleged as part of his claims in that action.

24 44. Following the 998 offers and acceptances in the State Case, Yuan and Lin resumed their looting
 25 and assault on Camiwell U.S..

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1 45. On September 28, 2023 (less than a week after the 998 offers were accepted), Yuan and Lin filed
 2 a Certificate of Election to Wind Up and Dissolve Camiwell U.S. without Zhang's knowledge or
 3 consent.³

4 46. Next, they made three separate and unauthorized withdrawals totaling almost \$672,000 from
 5 Camiwell U.S.'s account at Bank of America (account number 3251 1222 0628), all without Zhang's
 6 knowledge or consent, as follows:

- 7 a. \$162,500 transfer to a Canadian company controlled by Yuan called Scinal Inc.,
 Canada
- 8 b. \$200,000 in the form of a cashier's check payable to an unknown recipient
- 9 c. \$309,438 in the form of cashier's check payable to an unknown recipient

10 47. Even Camiwell U.S.'s own counsel in the State Case, Attorney Marie Quashnock, recognized the
 11 above-referenced funds transfer as "unauthorized" and requested, to no avail "that Mr. Yuan immediately
 12 return all funds to Camiwell's accounts."

13 48. Plaintiff is informed and believes and, based thereon, alleges that, absent Court intervention,
 14 Yuan and Lin plan to make even more unauthorized transactions, without Zhan's consent and
 15 inconsistent with the law and good business practices.

16 49. Ordinarily, Zhang would make a demand to the Board of Directors for Camiwell U.S. to take
 17 action against Yuan and Lin to return the funds and profits back to Camiwell U.S.; however, such demand
 18 would be futile and is excused by the fact that, as holders of a majority interest in Camiwell U.S. and
 19 being two of the three directors, Yuan and Lin could decline to take any such action. Indeed, after the
 20 998 offers were accepted, Zhang demanded return of the funds, through his counsel to counsel for Yuan
 21 and Lin, to no avail. Even the request from Camiwell U.S.'s own counsel, hired by Yuan and Lin
 22 themselves, to return funds to Camiwell U.S. was rebuffed by counsel for Yuan and Lin.

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26 ³ Plaintiff is informed and believes and, based thereon, alleges that the dissolution has not yet occurred because Camiwell's
 27 two remaining creditors have not yet been paid, the final tax returns have not yet been filed, and the balance of funds
 28 remaining after payment of the creditors has not yet been disbursed to shareholders. Camiwell Inc. currently has
 \$211,741.01 in funds left. These funds, along with any derivative recoveries that may be obtained in the District Court
 action, are its only remaining assets. Its only remaining creditors are its accountant (\$50,000) and its CPA (\$7,709.90), plus
 any additional fees that may be incurred in filing the final returns.

FIRST CAUSE OF ACTION

Conversion

(Derivatively by Camiwell U.S. against Defendants Yuan and Lin)

50. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

51. Plaintiff is informed and believes that Camiwell U.S. owned and possessed \$672,000 in its Bank of America account after the 998 offers were accepted.

52. Plaintiff is informed and believes and, based thereon, alleges that shortly after the 998 offers were accepted, Defendants Yuan and Lin substantially interfered with Camiwell U.S.'s ownership and possession of \$672,000 by knowingly and misappropriating corporate assets of Camiwell U.S. when they withdrew almost \$672,000 from Camiwell U.S.'s account at Bank of America, without justification or authority, and without Zhang's knowledge or consent.

53. Defendants converted and dispossessed said property, assets, and funds without proper authorization or consent from Camiwell, U.S.

54. As a direct and proximate result of Defendants Yuan and Lin's conducts, Camiwell U.S. has been damaged in an amount to be proven at trial, but not less than \$4,000,000.

55. Defendants Yuan and Lin's conducts were a substantial factor in causing Plaintiff's damage.

56. In engaging in the conduct as alleged herein, Defendants Yuan and Lin, and each of them, acted with oppression, fraud, or malice, entitling Plaintiff to an award of punitive damages in an amount sufficient to punish said Defendants and to deter such conduct.

SECOND CAUSE OF ACTION

Breach of Fiduciary Duty

(Derivatively by Camiwell U.S., and individually by Zhang, against Yuan and Lin)

57. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

58. As members of the Board Directors of Camiwell U.S., Defendants Yuan and Lin owed to the company and to its shareholders, including Plaintiff, a fiduciary duty of loyalty.

1 59. As alleged herein, Defendants Yuan and Lin breached their fiduciary duties by misappropriating
 2 corporate assets of Camiwell U.S. when they withdrew almost \$672,000 from Camiwell U.S.'s account
 3 at Bank of America, without justification or authority, and without Zhang's knowledge or consent.

4 60. As a direct and proximate result of the conduct of Defendants Yuan and Lin, Camiwell U.S. and
 5 Plaintiff have been damaged in an amount to be proven at trial, but not less than \$4,000,000.

6 61. The conduct of Defendants Yuan and Lin was a substantial factor in causing such damage.

7 62. In engaging in the conduct as alleged herein, Defendants Yuan and Lin, and each of them, acted
 8 with oppression, fraud, or malice, entitling Plaintiff and Camiwell U.S. to an award of punitive damages
 9 in an amount sufficient to punish said Defendants and to deter such conduct.

10 **THIRD CAUSE OF ACTION**

11 **Fraud (Concealment)**

12 *(Derivatively by Camiwell U.S. against Asiacom China)*

13 63. Plaintiff restates and incorporates by this reference each of the allegations contained in the
 14 proceeding paragraphs 1-49 as if fully set forth herein.

15 64. After its attempt to legally acquire Camiwell U.S. failed, Asiacom China tried to acquire
 16 Camiwell U.S. illegally and under the table.

17 65. On November, 20, 2018, Feng Wang, Vice President of Asiacom China in charge of overseas
 18 business, sent an email and thanked Camiwell U.S. for its past years of service to Asiacom China's
 19 customers and wanted to ensure a smooth transition with Camiwell U.S.'s engineers assisting Asiacom
 20 U.S.'s engineers when Asiacom China sets up its own operations in the U.S.

21 66. Defendant Asiacom China intentionally concealed certain facts to Plaintiff, which was to conduct
 22 a corporate raid on Camiwell U.S.

23 67. Unknown to Plaintiff at the time and contrary to the promise of Feng Wang for a professional and
 24 cooperative transition of business, Asiacom China secretly engaged Yuan as its manager and agent to
 25 take charge of its North America operation. Asiacom China through its subsidiary Asiacom U.S. which
 26 was incorporated by Yuan, and conspiring with Yuan and his brother Ben Tao Yuan (acting as CEO of
 27 Asiacom U.S.), carried out a secret corporate raid plan shortly after November 24, 2018 against Camiwell
 28 U.S. by hiring almost all of the 50 engineers of Camiwell U.S., and purchasing Camiwell U.S.'s

1 equipment, files, documents, programs, specifications necessary for business for the nominal amount of
 2 \$37,281.29.

3 68. Unknown to Plaintiff and in collusion with Asiacom China, Yuan signed the Asset Transfer
 4 Agreement as President of Camiwell U.S. that transferred almost all assets of Camiwell U.S. to Asiacom
 5 U.S., with Yuan's brother signing on behalf of Asiacom U.S. (as its CEO) which was and is, at all relevant
 6 times, a subsidiary of Asiacom China.

7 69. Camiwell U.S. did not know of the concealed facts that Asiacom had a secret raid plan, and Yuan
 8 signed an Assets Transfer Agreement in which Asiacom U.S. hired almost all 50 of the engineers of
 9 Camiwell U.S. and purchased Camiwell U.S.'s equipment for a nominal amount until Zhang later found
 10 out from the discovery in the State Case in August 2023. Camiwell U.S. reasonably relied upon in good
 11 faith of Asiacom China's words that it wanted to ensure a smooth transition and Yuan's word that he
 12 would be fully loyal to Camiwell and not do anything competitive against Camiwell U.S.

13 70. Asiacom intended to deceive Plaintiff by concealing the facts and never voluntarily came forth
 14 with such information. Asiacom had a desire never to tell Zhang. Zhang would have never known about
 15 these fact until they were revealed in Yuan and Lin's discovery in August 2023.

16 71. Had the omitted information been disclosed to Zhang and Camiwell U.S., Zhang and Camiwell
 17 U.S. reasonably would have behaved differently by negotiating a fair market value for asset purchase, as
 18 it was trying to do before Asiacom China's attempted acquisition failed. Camiwell U.S. reasonably
 19 would have hired counsel to block the give away of its assets pursuant to the Asset Transfer Agreement
 20 between two related people (Yuan and his brother Ben Tao Yuan) without Board or shareholder approval
 21 from Camiwell U.S., in violation of California Corporations Code Section 1001 (a).

22 72. Plaintiff and Camiwell U.S. was harmed when Camiwell U.S. lost almost all 50 of its engineers
 23 and its equipment necessary for the business.

24 73. Defendant Asiacom China's concealment was a substantial factor in causing Plaintiff and
 25 Camiwell U.S.'s harm.

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FOURTH CAUSE OF ACTION

Unjust Enrichment Based on Fraud

Corporate Raid on Camiwell U.S.

(Derivatively by Camiwell U.S. against Asiacom China, Asiacom U.S.)

74. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

77. By engaging in the fraudulent conduct by Feng Wang, Vice President of Asiacom China in charge of overseas business in conspiring with Yuan, as alleged herein, Asiacom U.S. and Asiacom China received the benefit of Camiwell U.S.'s labor and services for \$37,281.29 when Yuan and Asiacom China raided Camiwell U.S.'s assets and hired away 50 engineers to Asiacom U.S. which provided the services to Asiacom China. These assets included programs, files, customer information, technology, data, computers, servers, and the contents on such devices. The value of Camiwell U.S.'s labor and services actually amounted to \$2,460,000 (based on \$8,200 per month per engineer that Asiacom China was paying Camiwell U.S. for six months of reasonable time necessary to ramp things up to provide the same IT services).

78. Thus, Asiacom U.S. and Asiacom China were enriched in the amount of \$2,422,719 (\$2,460,000 minus \$37,281.29).

79. Asiacom China and Asiacom U.S. were unjustly enriched by engaging in self dealing with its own employee and manager Yuan and their own subsidiary and/or sister company Camiwell Canada, by not having to pay fair market rate fees for the IT services rendered by Camiwell U.S. like they would have to in normal arm's length transactions.

FIFTH CAUSE OF ACTION

Unjust Enrichment Based on Fraud

Diversion of Camiwell U.S.'s Business

(Derivatively by Camiwell U.S. against Camiwell Canada)

80. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

1 81. By engaging in the conduct as alleged herein, Defendant Camiwell Canada received the benefit
 2 of RMB 6.5845 million and RMB 3.6031 million in 2018 and 2019 when it diverted Asiacom China's
 3 business from Camiwell U.S. to Camiwell Canada while outsourcing to Camiwell U.S. to provide the
 4 same IT services for no consideration. At the same time, Camiwell Canada was able to minimize its own
 5 expenses by maintaining a barebones operation with only two employees.

6 82. Camiwell Canada was unjustly enriched when it received the IT services provided by Camiwell
 7 U.S. without paying Camiwell U.S.

8 83. Thus, Defendants Camiwell Canada, Asiacom China, and Asiacom U.S. unjustly enriched
 9 themselves at the expense of Camiwell U.S., obtaining benefits wrongfully that they unjustifiably have
 10 not returned.

11 84. As a direct and proximate result of Defendants' conduct, Camiwell U.S. has been damaged in an
 12 amount to be proven at trial, but not less than \$4,000,000.

13 SIXTH CAUSE OF ACTION

14 Common Count: Money Had and Received

15 *Corporate Raid on Camiwell U.S.*

16 *(Derivatively by Camiwell U.S. against Asiacom China, Asiacom U.S.)*

17 85. Plaintiff restates and incorporates by this reference each of the allegations contained in the
 18 proceeding paragraphs 1-49 as if fully set forth herein.

19 86. By engaging in the conduct as alleged herein, Asiacom U.S. received the benefit of 50 of the
 20 engineers and Camiwell U.S.'s assets, labor and services for \$37,281.29 when Asiacom China and Yuan
 21 raided Camiwell U.S.'s assets and hired away 50 engineers to Asiacom U.S. which provided the services
 22 to Asiacom China. These assets included programs, files, customer information, technology, data,
 23 computers, servers, and the contents on such devices. The amount should have been \$2,460,000 (50
 24 engineers working at \$8,200 per month, which is the rate that Asiacom China used to pay Camiwell U.S.
 25 took six months to ramp up the services). Thus, Asiacom U.S. received \$2,422,719 in services and assets
 26 that was intended to be used for the benefit of Camiwell U.S.

27 87. The amount of \$2,422,719 was not used for the benefit of Camiwell, U.S.

28 88. Asiacom U.S. has not given \$2,422,719 to Camiwell U.S.

SEVENTH CAUSE OF ACTION

Common Count: Money Had and Received

Diversion of Camiwell U.S.'s Business

89. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

90. By engaging in the conduct as herein, Defendant Camiwell Canada received money that was intended to be used for the benefit of Plaintiff. Camiwell Canada received money in the amount of approximately RMB 6.5845 million and RMB 3.6031 million in 2018 and 2019 from Asiacom China that was intended to be used for the benefit of Camiwell U.S. as it provided IT services to Asiacom China.

91. The money that Camiwell Canada received from Asiacom China was not used for the benefit of Camiwell U.S. as Camiwell Canada kept the money.

92. Camiwell Canada has not paid or given the money to Camiwell U.S. for its IT services in which Camiwell Canada has received from Asiacom China.

EIGHTH CAUSE OF ACTION

Preliminary Injunction

(Derivatively by Camiwell U.S. against Bank of America, Yuan, and Lin)

93. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

94. After Defendants Yuan and Lin withdrew funds deposited in the business account at Bank of America (account no. 3251 1222 0628), there is still \$77,544.29 remaining in that account and another \$134,296.28 remaining in a separate account (account no. 3251 0849 4390).

95. Camiwell U.S. through this second amended derivative complaint petitions the Court to issue a preliminary injunction to prohibit Yuan and Lin from further withdrawing any funds from said accounts, and to prohibit Defendant Bank of America from allowing any further withdrawal from said accounts.

96. Camiwell U.S. further asks that the Court enjoin Defendants, and each of them, from dissolving Camiwell U.S. and from diminishing its assets.

97. Camiwell U.S. further asks that the Court enjoin Defendants, and each of them, from usurping corporate opportunities of Camiwell U.S.

NINTH CAUSE OF ACTION

Declaratory Relief

(Derivatively by Camiwell U.S., and individually by Zhang, against Yuan and Lin)

98. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

99. A dispute presently exists between the parties as to who is entitled to the funds in the above-referenced B of A accounts.

100. A judicial determination is therefore necessary to establish rightful ownership of the funds.

TENTH CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

(Derivatively by Camiwell U.S. against Asiacom China)

101. Plaintiff restates and incorporates by this reference each of the allegations contained in the proceeding paragraphs 1-49 as if fully set forth herein.

102. In every contract or agreement, there is an implied promise of good faith and fair dealing. This implied promise means that each party will not do anything to unfairly interfere with the rights of any other party to receive benefits of the contract.

103. Camiwell U.S. and Asiacom China entered into various service contracts for Camiwell U.S. to provide IT services to Asiacom China.

104. Camiwell U.S. did all of the significant things that the contract required it to do including providing IT services to Asiacom China.

105. Asiacom China conduct of carrying out a secret corporate raid plan and hired away Camiwell U.S.'s CEO Benlin Yuan to be charge of business in the U.S. and Canada which Yuan brought in his own brother Ben Tao Yuan as CEO of Asiacom U.S. Asiacom China, Asiacom U.S. Yuan and his brother conjured up a secret plan to raid Camiwell U.S. employees and assets for a nominal consideration of \$37,281.19.

106. That by doing so, Asiacom China did not act fairly and in good faith, and Camowell U.S. was harmed by Asiacom China's conduct.

PRAYER FOR RELIEF

Now, therefore, Plaintiff, individually and derivatively on behalf of Camiwell U.S., prays for relief and judgment as follows:

1. For injunctive relief preventing Defendants, their successors and affiliates, and all persons acting on their behalf from further unlawfully:
 - a. further diminishing Camiwell U.S. and its assets;
 - b. transferring Camiwell U.S. assets to their own interests;
 - c. taking corporate opportunities of Camiwell U.S.
 2. For compensatory damages in an amount to be proven at trial, but not less than \$4,000,000.
 3. For punitive damages according to proof.
 4. For reasonable attorneys fees and costs to the extent permissible under applicable law.

| For such other relief as the Court may deem just and proper.

Dated: June 26, 2024

SAC Attorneys LLP

By: Brian A. Barnhorst

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Brian A. Barnhorst, Esq.

Dennis Chin, Esq.

Attorneys for Plaintiff and

Jinju Zhang